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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,644	12/29/2003	Michael Scott Brunner	17,777	6906
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EXAMINER				
NGUYEN, THUY-VI THI				
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3689				
MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/748,644

**Applicant(s)**

BRUNNER ET AL.

**Examiner**

THUY VI NGUYEN

**Art Unit**

3689

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4-15, 17, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-15, 17, 21-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This is in response to the applicant's communication filed on December 04, 2008, wherein:

Claims 1-2, 4-11, 12-15, 17, 21- 22 are currently pending;

Claims 1, 12 and 21 have been amended;

Claims 3, 16, 18-20 have been cancelled;

***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 08, 2008 has been entered.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The term "premium container" in claims 1-11 is a relative term which renders the claim indefinite. The term "premium" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in

the art would not be reasonably apprised of the scope of the invention. Therefore, it is interpreted as "a container".

In claim1, it's not clear the relationship of the last step (d) with the previous steps (a-c). How does the "controlling microbes with the premium container using a microbe control feature that generates chloride dioxide gas" of step (e) relates into the scope of the claimed invention which deals with the method of selling the container by providing the premium container, charging the consumer for the perishable and the premium container?

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 4-11, 12-15, 17, 21- 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over POIRIER (US 2003/0057026 A1) in view of CAPPEL (US 7,008,106 B2) and further in view of SIMPSON (US 6,171,558)

**As for claim 1**, POIRIER a method for selling a perishable-receiving premium container, the method comprising:

a) providing the premium container adjacent to a display of a perishable, wherein the premium container is adapted to be used by a consumer to place the perishable into the premium container

[...providing the container (bag) at the grocery store; abstract; par. 0004; 0014; figures 1-2];

b) charging the consumer for the perishable

[...customer purchase of selected merchandise (food) which imply the merchandise has to be charged; see par. 0014];

c) charging the consumer for the premium container

[...the bags/container may be sold to customer at retail grocery store; see figure par. 0009; par. 0014 and figures 2-3];

**Note:** for convenience, letters (a)-(d) are added to the beginning of each step.

POIRIER discloses the claim invention as indicated above except for the indicia/price tag/or a bar code on the container (step c) and the controlling microbes with the container using to generate chlorine dioxide gas (step d).

CAPPEL discloses the container with a price tag/indicia [...col. 8, lines 1-5 and figures 5a-b; 6a-b shows price tag (56) on the bag]; wherein the container/zip lock bag has a slider (32) to seal the bag for controlling the microbes, temperature, gas mix, humidity as showed at least in figures 5a-b, 6a-b, 8a-b]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the method of selling the container of POIRIER to include the method of having the indicia/tag and the control microbes feature on container as taught by CAPPEL in order to make it more convenience for the consumer to use as well as to protect the food from decay. Furthermore, as for using the feature indicia/ a barcode/price tag to charge on the product/container is old, common and well known in the art. One of ordinary skill in

the art would have been use this feature to indicate the price and place on the item/product/container in order to make it more convenience for the store personel as well as for the consumer to recognize the prize of an item.

The combination of POIRIER/CAPPEL discloses all the claim invention as indicated above except for the using a microbe control feature that generates chlorine dioxide gas in the container.

SIMPSON cited the well known generator feature for creating chlorine dioxide in the container to reduces safety hazards, the production of chlorine dioxide can be monitored and controlled with a control feature which detects the quantity of chlorine dioxide generated {see abstract, col. 2, lines 37-62}. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the method of selling the container having the indicia/tag and the control microbes feature on container of POIRIER/CAPPEL to include the well known control feature for generating chlorine dioxide gas as taught by SIMPSON in order to produce chloride dioxide in a safe and economical manner {SIMPSON col. 2, lines 27-35}.

**As for claim 2**, POIRIER discloses further comprising providing a perishable, wherein the perishable is of a type selected from the group consisting of produce, deli, fast food, quick-serve food, frozen food, baked goods, meat, fish, and floral [...merchandise (food) at grocery store; par. 0014 and figure 1]..

**As for claim 4**, CAPPEL discloses providing indicia related to the container indicative of a price of the container, wherein the indicia is selected a price tag [Fig.5a and 5b].

**As for claim 5**, CAPPEL discloses the container being resealable [col.1, lines 15-17. figures 1-2].

**As for claim 6**, POIRIER discloses a plurality of the containers [...providing bags; figures 2-3].

**As for claim 7**, CAPPEL disclose wherein the providing step includes providing the container on a wicket [...see figure 1-2].

**As for claim 8**, CAPPEL discloses the container on a roll [...purchase package of slider bags/container; see col. 1, lines 37-40].

**As for claim 9**, CAPPEL container in a box [...purchase package of slider bags/container; see col. 1, lines 37-40].

**As for claim 10**, CAPPEL discloses the container is disposable [...plastic slider bags; col. 1, lines 59-60].

**As for claim 11**, CAPPEL discloses allowing a consumer to place the perishable into the container and to seal the container [...open the slider bag; use a portion of the product and reclose the bag; see col. 1, lines 48-50].

**As for claim 12**, POIRIER discloses a method for offering a consumer a choice between disposable perishable- receiving containers, the method comprising:

- a) providing a premium container adjacent to a perishable  
[...providing container (selling bags that can be re-usable) at grocery store; par. 0004; par. 0014]
- b) providing a standard container adjacent to the perishable

[...providing container (bags which is previous used) at grocery store; par. 0005; par. 0014];

c) allowing the consumer to choose between the standard and premium containers

[...allowing the consumer the choice of either using a previously used bag or using a bag from the store; see figure 2]; and

d) charging the consumer for the container chosen based on indicia on the container, wherein the charge for the premium container is greater than the charge for the standard container

*[...there may be a charge for using the bags that are from store; and there's no charge for the bag that consumer has from previous purchase; par. 0009; par. 0014].*

**Note:** for convenience, letters (a)-(d) are added to the beginning of each step.

POIRIER discloses the claim invention as indicated above except for the microbe control feature in the container for generating the chlorine dioxide gas (step a) and indicia/price tag/or a bar code on the container (step c).

CAPPEL discloses the container with a price tag/indicia [...col. 8, lines 1-5 and figures 5a-b; 6a-b shows price tag (56) on the bag]; wherein the container/zip lock bag has a slider (32) to seal the bag for controlling the microbes, temperature, gas mix , humidity as showed at least in figures 5a-b, 6a-b, 8a-b]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the method of selling the container of POIRIER to include the method of having the indicia/tag and the control microbes feature on container as taught by CAPPEL in order



to make it more convenience for the consumer to use as well as to protect the food from decay. Furthermore, as for using the feature indicia/ a barcode/price tag to charge on the product/container is old, common and well known in the art. One of ordinary skill in the art would have been use this feature to indicate the price and place on the item/product/container in order to make it more convenience for the consumer as well as the store personnel.

The combination of POIRIER/CAPPEL discloses all the claim invention as indicated above except for the using a microbe control feature that generates chlorine dioxide gas in the container.

SIMPSON cited the well known generator feature for creating chlorine dioxide in the container to reduces safety hazards, the production of chlorine dioxide can be monitored and controlled with a control feature which detects the quantity of chlorine dioxide generated {see abstract, col. 2, lines 37-62}. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the method of selling the container having the indicia/tag and the control microbes feature on container of POIRIER/CAPPEL to include the well known control feature for generating chlorine dioxide gas as taught by SIMPSON in order to produce chloride dioxide in a safe and economical manner {SIMPSON col. 2, lines 27-35}.

**As for claim 13**, CAPPEL discloses the indicia is selected from the group consisting of a bar code, a chip, a smart tag, an electronically-based indicator, a magnetically-based indicator, a price tag, a produce-type number, a model number, a color, a container shape, and a SKU [...a price tag; col. 8, lines 1-5 and figures 5a-b].

**As for claim 14**, POIRIER disclose wherein the charge for the standard container is zero [...there's no charge for the bag that consumer has from previous purchase; par. 0009; par. 0014]. Further more, it's obvious that the plastic produce bags are usually provided (without charge) to hold the selected fruits and vegetables at the supermarkets or grocery store.

**As for claim 15**, CAPPEL discloses wherein the premium container has an element- control feature [...slider bag with zipper (22) to thermally fused; col. 6, lines 44-42 and figures 1-2].

**As for claim 17**, CAPPEL disclose the premium container has a plurality of element-control features [...a plastic bag with re-closable zipper and the slider; abstract].

**As for claim 21**, POIRIER discloses a method for producing a perishable-receiving premium container, the method comprising:

assembling the plurality of premium containers to facilitate dispensing to a consumer and/or a retail worker

[...*merchant provides customers with re-usable bags for transporting their purchase*; abstract].

POIRIER discloses all the claim invention as indicated above except for manufacturing a plurality of premium containers, wherein each premium container an indicia of the price of the container which e.g. a chip, smart tag or electronically based indicator or bar code.

CAPPEL discloses the container with a price tag/indicia [...col. 8, lines 1-5 and figures 5a-b; 6a-b shows price tag (56) on the bag]; wherein the container/zip lock bag has a slider (32) to seal the bag for controlling the microbes, temperature, gas mix , humidity as showed at least in figures 5a-b, 6a-b, 8a-b]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by POIRIER with the method of having slider bag/container as taught by CAPPEL in order to make it convenience for the consumer to use and also to protect the food from decay.

The combination of POIRIER/CAPPEL discloses all the claim invention as indicated above except for an indicia feature of the price of the container is selected from a chip, a smart tag/RFID, barcode. This feature appear to be old, common and well known . One of ordinary skill in the art would have been use this feature to indicate the price and place on the item/product/container in order to make it more convenience for the consumer as well as the store personnel.

**As for claim 22**, CAPPEL discloses the plurality of premium containers are disposable [...plastic slider bags; col. 1, lines 59-60].

### ***Response to Arguments***

6. Applicant's arguments filed 12/04/08 have been fully considered  
Applicant's arguments with respect to claims 1-2, 4-11, 12-15, 17, 21- 22 have been considered but are moot in view of the new ground(s) of rejection due to the amended claim language.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy-Vi Nguyen whose telephone number is 571-270-1614. The examiner can normally be reached on Monday through Thursday from 8:30 A.M to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. N./

Examiner, Art Unit 3689

/Tan Dean D. Nguyen/  
Primary Examiner, Art Unit 3689  
January 31, 2009